

THE PARC SPEAKS OUT ON VALIDATING JUSTIFICATIONS AND APPROVALS (J&As) –

The Corps has no proclivity for Sole Source Procurement

On the other hand Sole Source (noncompetitive) procurement are not objectionable when they are valid and the acquisition environment for the requirement has been clearly and comprehensively overlaid over the exception(s) to competition selected and cited in the J&A. J&As must reflect the following:

Must Be a stand-alone document – When a J&A is reviewed by any stakeholder with any varying interest (small business participation, restrictions in specifications, other limitations in competition, market research, requirement constraints, unusual customer needs, etc.), the document must clearly address the challenges placed upon the requirement and the intended means of mitigating those challenges. **All issues must be addressed in the J&A.** Whatever other documents need to be referenced or attached to the J&A for clarity should be indicated in the appropriate paragraph in the body of the J&A. **The document should be so clear and complete that the PARC or any other reviewer's short tenure in the Corps at the time of the review should not be a factor for not understanding the environment for the noncompetitive acquisition.**

Must Overlay the Environment Appropriately Over the Exception Cited – Oftentimes J&As cite Exceptions over broadly with little enhancement on why the exception applies. The Exceptions to the tenets of the Competition and Contracting Act (CICA) were critically analyzed as fully supporting the integrity of the procurement process; therefore in each J&A whenever a specific requirement falls under a specific Exception, the environment embracing that Exception must be clearly stated. **Again, the Exception Alone is not adequate justification for approval!**

Must show appropriate public visibility of the intent to award a contract noncompetitively – Other than a few exceptions and special situations, planned sole source procurement must be synopsisized in the Commerce Business Daily (CBD) in accordance with Subpart 5.2 of the FAR. Exceptions are explained in FAR 5.202 and special situations in FAR 5.205. A market survey cannot substitute the Contracting Officer's responsibility to publicize in the CBD. So advanced planning for sole source procurement, under other than emergency conditions, is extremely important so that the time required for synopsis and subsequent actions are adhered to. **Otherwise, approval of the J&A could be denied until proper public notification has been accomplished.** The primary purposes of the CBD notice are to aid in the validation of the sole source, improve small business access to acquisition information, and enhance competition by identifying contracting and subcontracting opportunities. **If noncompetitive awards are intended, agency officials must make public their reasons for doing so.** Generally, the Contracting Officer must synopsisize, prepare the J&A when all responsible sources will not be allowed to participate and obtain approval prior to release of a solicitation.

Must be written in the AFARS format.

Must support the use of other than full and open competition. The J&A must contain relevant facts and reflect consistency throughout the document. J&As based upon irrelevant facts will be returned for additional information and could be disapproved. **The J&A process must be serious business and reflect the highest degree of critical thinking at every level. It must truly reflect an environment for other than full and open competition. The J&A should be able to be challenged by any stakeholder in the acquisition process with any magnification of the microscope, over time, and survive!**

Must have attached to the J&A, the correct certifications.

Must be void of the following specific Problem Areas often encountered in J&A documents:

Paragraph 2. Description of Action.

1. Fails to state type of contract.
2. Fails to identify the type of funds.

Paragraph 3. Description of Supplies/Services.

3. Fails to include options.

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4. Fails to state whether options will be evaluated.
5. Fails to include price for option quantities.

Paragraph 4. Authority Cited

6. Fails to cite the statutory authority for going other than full and open competition.
7. Fails to cite the regulatory authority for going other than full and open competition.

Paragraph 5. Reason(s) for Authority(s) Cited.

8. Fails to adequately justify the Agency's use of other than full and open competition.

(1) Specific Exceptions.

(a) Sole Source/Limited Number of Sources.

- Fails to discuss Technical Data Package (TDP) availability (when applicable).
- Fails to discuss additional cost and time to go competitive.
- Fails to address who imposed program schedules.

(2) Urgency.

- Fails to state the harm to the Government (Financial or other serious injury).
- Fails to discuss delivery schedule/lead times.
- Fails to discuss how the Agency got itself into its present position.

(3) Industrial Mobilization.

- Fails to establish that the item is required for mobilization.
- Fails to justify the numbers being procured.
- Includes additional numbers beyond quantity needed to keep mobilization base warm.
- Fails to state if item is on the Critical Items List.

(4) International Agreement.

- Fails to address to Agency's efforts to inform the requester of possible competition opportunities.
- Fails to include the Foreign Military Sales customer's request.

(5) National Security.

- Fails to state all sources available for competition.
- Fails to address efforts to compete acquisition with all qualified sources.

Paragraph 6. Efforts to Obtain Competition.

- a. Fails to discuss Agency's efforts to seek competition on present acquisition.
- b. Fails to discuss Agency's efforts to Breakout items for competition.

Paragraph 7. Actions to Increase Competition

- a. This paragraph is often inconsistent with paragraph 5, Reason for Authority Cited. This paragraph often states we have a TDP suitable for competition when paragraph 5 states the Agency doesn't have a TDP.
- b. Fails to discuss future actions to ensure competition (acquisition or a TDP suitable for competition).
- c. Development of qualified sources or pilot programs to increase participation.
- d. Subcontract Plans and Multiple Awards.

Paragraph 8. Market Research

- a. The Agency fails to complete a Market Survey.
- b. The Market Survey is several years old.
- c. Fails to include the Market Survey waiver if Agency has approved one.
- d. Fails to identify qualified sources.

Paragraph 9. Interested Sources

- a. Fails to list interested sources.
- b. Fails to discuss why interested sources cannot meet the requirements.
- c. The Agency fails to synopsize the procurement.

Paragraph 10. Other Factors

- a. Fails to give procurement history.
- b. Addresses issues, which should be addressed in other paragraphs of the J&A.
- c. Fails to discuss other J&As issued for the same item or service.

Paragraphs 11/12/13. Certifications

- a. Fail to have paragraphs certified.

1. Special Competition Advocacy Concerns.

- a. Length of option periods and justifications therefor.
- b. Agency's effort at breakout or severability of effort.
- c. Acquisition Strategy
- d. Commander, Attorney and PM decisive engagement in the process.
- e. Software data rights and intellectual property rights.
- f. The reality of Smaller Budgets; the need for the approval of only valid noncompetitive;

and the need to acquire competitive savings.

Note: A PARC instruction is forthcoming as strategic guidance to framing the philosophy on noncompetitive contracting. The textbook "Defense Acquisition Management (Sammet & Green, 1990) states: "Despite all obstacles to competition, real and imaginary, it is the most dramatic and effective means of reducing costs to the Defense Department, the prime contractor, and suppliers. Competition, and only competition, will make both prime contractors and suppliers sharpen their pencils. Sole-source suppliers grow lazy and become too easily satisfied with less than serious efforts to reduce costs; suppliers become old friends instead of aggressive cost reducers. When competition was introduced, several advantages accrued: cost reduction, which led to winning more programs; earlier deliveries; better quality; and the implementation of new ideas but at reduced costs. But there are also disadvantages: up-front costs; additional time needed; the necessity of replacing a supplier who has been delivering a satisfactory product; risks generally, especially that of ending up with an unsuccessful second-source supplier." **BUT CAREFULLY PONDER THAT THE DISADVANTAGES**